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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re BRITTANY P., a Person Coming
Under the Juvenile Court Law.

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

H022249
(Santa Clara County
Super.Ct.No. JD11244)

LOUIS P.,

Defendant and Appellant

_____ /

Appellant Louis P. (father) appeals from an order terminating his parental rights to his child Brittany P. (Welf. & Inst. Code, § 366.26, subd. (c)(1); Cal. Rules of Court, rule 39.1A.)¹ Father argues that the juvenile court erred by entering the order terminating parental rights based on judicial notice of its previous dispositional order, which was never reflected in a formal written order. We find no error requiring reversal, and therefore affirm.

¹ All further statutory references are to the Welfare and Institutions Code. All further rule references are to the California Rules of Court.

FACTS AND PROCEDURAL HISTORY

On September 21, 1999, the Department of Family and Children's Services (the Department) filed a petition as to the child (born in December 1995) pursuant to section 300, subdivisions (b), (c), and (g). As amended on October 14, 1999, the petition alleged that the child was placed into protective custody on September 18, 1999, after she had been found alone at a Caltrain station. The child's mother had been found murdered in a hotel room, and father was incarcerated on charges relating to the murder. The child indicated that she saw her father choke her mother and hit her head against the wall, and that she saw her mother on the bathroom floor not breathing and with blood on her. Father admitted leaving the child at the train station with over \$300 and instructions. After a detention hearing the court ordered the child detained, allowed the child visits with appropriate relatives, and ordered a psychological evaluation for father.

The contested jurisdictional hearing was held on January 31, 2000. Father was present and was represented by counsel. The social worker testified and the court admitted various reports from the social worker into evidence. The court found the amended petition true, ordered two psychological evaluations of father, and set the dispositional hearing for March 13, 2000. The dispositional hearing was later continued and was finally held on June 5, 2000.

The social worker's report for the dispositional hearing included the psychological evaluations of father submitted by Dr. Peter Berman and Dr. Alan Garton. Dr. Berman concluded that father "is functioning with a fixed persecutory delusional system and that he has a mood disorder. Based on [father's] behavior both in the past and presently, he must be considered to be an imminent danger to anyone around him who [father] considers to be in any way threatening. He appears to be involved with issues of power and control in his life, and his thinking is distorted at times. Clearly, he is not capable of caring for and protecting his daughter either now or in the future." Dr. Garton concluded that father "suffers from a mental disability which renders him unable to care for and control his daughter adequately," that father

"is unable to use reunification services," and that father "is not capable of learning from reunification services to adequately care for his child within twelve months."

Father was present in custody at the June 5, 2000 dispositional hearing and was represented by counsel. The Department and counsel for the child requested that the court order the bypass of reunification services pursuant to section 361.5, subdivisions (b)(2) and (b)(9).² The court admitted the social worker's reports and the psychological evaluations into evidence. Father called and examined Dr. Garton and Dr. Berman. After submission of the matter, the court adjudged the child a dependent child of the court. It found by clear and convincing evidence that the welfare of the child required that she be removed from father's custody, and that there would be a substantial danger to her physical health, safety, protection, and physical and emotional well-being if she were returned. The court also found that the child had been left without any provision for her support. The court further found, by clear and convincing evidence that father suffers from a mental disability, that the mental disability renders father incapable of adequately caring for the child or utilizing family reunification services, that father willfully abandoned the child, and that the abandonment constituted a serious danger to the child. Accordingly, the court ordered the bypass of reunification services and set the selection and implementation hearing for October 3, 2000.

The following then occurred: "[The Court]: . . . [¶] And I advise [father] you may seek appellate review of my decision not to provide or offer reunification services. Notice of intent to file petition for extraordinary writ review must be filed within seven days of today's date. [¶]

² "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: . . . [¶] (2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services. . . . [¶] (9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. . . ." (Former § 361.5, subd. (b); Stats. 1999, chs. 399, 805, §§ 1, 1.2.)

You may qualify for free counsel on appeal and for a free copy of the record on appeal. [¶] That concludes this matter. Thank you. [¶] [Counsel For The Department]: I will prepare the order. [¶] [The Court]: Thank you. [¶] If you do, when you prepare the order, if you will submit it directly here, I will sign it and send it back over. [¶] [Counsel For The Department]: Very good. Thank you."

The section 366.26 hearing was held on November 2, 2000. Father was present in custody, and was represented by counsel. The court admitted the social worker's report and addendum into evidence. The social worker's report indicated that the child had been with a foster/adopt family for over six months, and that the family was planning to adopt the child. The report also indicated that there were other families interested in adopting the child if this family's adoption did not go through for any reason. Father's counsel indicated that he did not need to cross-examine the social worker and that father had decided not to testify. After submission of the matter the court stated, "Having reviewed the documents presented to me on behalf of [the child] dated 11-2, 10-3 and having taken judicial notice of the court's prior orders and findings in this matter, I am going to follow the recommendations of the Department on this date, and at this time I am going to find by clear and convincing evidence that the child is likely to be adopted and termination of parental rights would not be detrimental to her. [¶] The Court hereby terminates the parental rights of the child's father, . . . and free[s the child] for adoption. The child is to be referred to adoption services at this time and this is to proceed as quickly as possible." Father filed a notice of appeal that same day.

The record on appeal was filed December 7, 2000. After appointed counsel on appeal was granted three extensions of time to file the opening brief, father's request to substitute in propria persona was granted on May 14, 2001. On May 29, father requested that the court augment the record with the reporter's transcript of the dispositional hearing and the formal dispositional order. Father indicated that he could not recollect being advised of the need to file a notice of intent to challenge the court's bypass of reunification services. (See rule 39.1B.) On June 6, this court ordered the record augmented to include the formal dispositional

order, but otherwise denied father's augmentation request. (See rule 39.1A(c) and (d).) On June 14, the clerk of the superior court filed a certificate indicating that a formal dispositional order could not be located. On June 29, this court granted father's request for reappointment of counsel on appeal. Father's opening brief was filed on July 31, and a corrected brief was filed on August 6. Along with its response brief, on October 4, the Department filed a request for augmentation of the record with an attached reporter's transcript of the dispositional hearing. In the motion, the Department conceded that "the dispositional orders were never made part of a written order" This court granted the request for augmentation on October 19. Father did not thereafter file a reply brief.

DISCUSSION

Father first argues that this court's order denying his motion to augment the record with the reporter's transcript of the dispositional hearing was a violation of his right to due process, equal protection, and effective assistance of counsel on appeal, mandating reversal. As this court subsequently ordered the record augmented with the relevant reporter's transcript, this issue is moot.

Father next argues that the juvenile court erred by entering the order terminating his parental rights based on judicial notice of its previous dispositional order, which was never reflected in a formal written order. Father argues that because the juvenile court could only lawfully judicially notice those findings and orders that were part of some record, and there was no record of its dispositional findings and orders, the only findings and orders lawfully judicially noticed in this case were the jurisdictional findings and orders. Conceding that the reporter's transcript of the dispositional hearing must be relied upon in order to determine what findings and orders were made at dispositional hearing, the Department argues that the record sufficiently shows that all of the necessary findings and orders were made at the dispositional

hearing and that father was present at that hearing and was properly advised of his rights pursuant to rule 39.1B. (See rule 1436.5(d).)³

We agree with the Department that a review of the reporter's transcript of the dispositional hearing indicates that all of the necessary findings, orders, and advisements were made on the record with father present. Father failed to file a notice of intent to seek review of the dispositional findings and orders, and thus is precluded from raising any issue regarding those findings and orders in this appeal. (§ 366.26, subd. (l); rule 39.1A(b).) In addition, father did not object at the section 366.26 hearing when the juvenile court indicated that it was taking judicial notice of all its prior findings and orders in this case. Father has failed to raise any other issue regarding the order terminating his parental rights. He was present at the section 366.26 hearing, and was represented by counsel, but declined to cross-examine the social worker or to present any evidence. The social worker's report admitted into evidence indicated that the child was adoptable, and the legislative preference for a permanent plan is adoption. On this record, we cannot say that the court erred in terminating father's parental rights. (See e.g., *In re Brittany C.* (1999) 76 Cal.App.4th 847, 852.)

³ "When the court orders a hearing under section 366.26, the court shall advise orally all parties present, and by first class mail for parties not present, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other notice of intent to file a writ petition and request for record and a Writ Petition -- Juvenile form (JV-825) or other petition for extraordinary writ. . . . Copies of Judicial Council form Writ Petition -- Juvenile (JV-825) and Judicial Council form Notice of Intent to file Writ Petition and Request for Record (JV-820) shall be available in the courtroom, . . ." (Rule 1436.5(d).)

DISPOSITION

The order terminating father's parental rights is affirmed.

O'Farrell, J.*

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Wunderlich, J.

* Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.